

OGC 76-5955  
29 October 1976

MEMORANDUM FOR: Director of Central Intelligence

FROM : [REDACTED]  
Associate General Counsel

STATINTL

SUBJECT : Pay Rates for Agency Senior Executive Pay  
Scale Personnel

1. The General Counsel is one of those positions which received an increase in pay by virtue of the Executive Order and the McCone memorandum. Mr. Lapham therefore feels that he should not participate in this action and, except for that decision, has not done so.

2. I agree that it is appropriate to request your decision concerning pay rates for the Agency senior Executive Pay scale personnel. You should be aware, however, that in my judgment the pay rates recently established by the President for Cabinet members and various other statutory positions in the executive branch, effective 1 October, became effective also for our Executive Pay employees also as of 1 October. It is well established that pay rates may not be adjusted retroactively, that is, you could not in late October reduce the pay rates of your Executive Pay employees retroactively to 1 October. Consequently, the only decision you are faced with in Mr. Yale's memorandum is whether to cut back those salary rates to the pre-1 October levels or to opt not to do so. You, of course, may conclude that the former choice realistically is not available. The reasoning by which we conclude the President's Executive Order of 1 October 1976 caused the pay increases for our Executive Pay employees to become effective as of the effective date prescribed by the Executive Order is outlined in my opinion of 6 October, which is attached as Tab A of Mr. Yale's memorandum.

3. It should be emphasized also that an action or decision at this time couched in terms which would indicate or suggest that absent that action the pay raises would not become effective would raise serious questions as to the validity of the pay raises put into effect in previous years for our Executive Pay employees and those of our General Schedule personnel as well. As to both categories of employees (Executive Pay and General Schedule), action was taken some years ago by the Director - Acting Director Carter in 1962 as to General Schedule employees and Director McCone in 1964 as to Executive Pay employees - in the form of memoranda establishing that when in the future pay raises were set for General Schedule and Executive Level positions in the government generally, those pay rates would be effective automatically also for the corresponding Agency positions, effective as of the same date the government-wide raises became effective, and no administrative decision or action by the Director would be necessary to put those raises into effect. Both General Schedule and Executive Level raises automatically have become applicable at various times through the years under the authority of the Directors' memoranda.

4. Unless you direct to the contrary, I am satisfied that your favorable decision on the action referred to you by paragraph 1 of Mr. Yale's memorandum should be understood as your endorsement and continuation of the policy position taken by Mr. McCone, and that you are aware that the effect of that action by Mr. McCone, in conjunction with the October 1976 Executive Order, is that the pay rates and effective date prescribed by that order became applicable also to the pay rates for the Agency Executive Pay employees.

STATINTL

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